

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 447

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO FIREARMS, EXPLOSIVES AND OTHER DEADLY WEAPONS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3302K, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR OBTAINING RELIEF FROM THE PROHIBITION TO POSSESS OR RECEIVE FIREARMS DUE TO MENTAL HEALTH STATUS; AND AMENDING SECTION 67-3003, IDAHO CODE, TO PROVIDE ADDITIONAL DUTIES OF THE IDAHO STATE POLICE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 33, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-3302K, Idaho Code, and to read as follows:

18-3302K. RELIEF FROM PROHIBITION TO POSSESS OR RECEIVE FIREARMS -- MENTAL HEALTH STATUS. (1) Any person who is prohibited from receiving or possessing a firearm pursuant to 18 U.S.C. section 922(d)(4) or (g)(4) or state law or as a result of being involuntarily committed in this state to a facility pursuant to section 16-2418, 18-212, 66-329 or 66-406, Idaho Code, may petition the magistrate court in each county in which any commitment was issued for relief from such prohibition.

(2) Such petition shall be verified by the petitioner and at a minimum contain the following:

(a) Evidence that the petitioner is not a danger to himself or to others;

(b) Evidence of the petitioner's criminal and mental health history and record and that the petitioner does not have a criminal charge pending nor is knowingly under criminal investigation for a crime punishable by imprisonment for a term exceeding one (1) year;

(c) Evidence of the petitioner's character and reputation in the community;

(d) A certified copy of the judgment or adjudication that is the basis for the prohibition; and

(e) Proof of service of such petition upon the county prosecuting attorney for the county in which the petition is filed.

(3) If the court determines that the petition is not sufficient, the court shall notify the petitioner and shall grant a reasonable time to correct the deficiencies. Upon reviewing the petition and finding it sufficient, the court shall order the petitioner to undergo, at the petitioner's expense, an evaluation and risk assessment by a licensed psychologist, psychiatrist or designated examiner approved by the court. Upon receipt of the report of the evaluation and risk assessment, the court shall set a hearing on the petition. The court shall provide reasonable notice of the hearing to the petitioner and to the county prosecuting attorney.

1 (4) At a hearing on the petition, the court shall receive evidence on
2 the record from the petitioner and the state concerning the following:

- 3 (a) The dangers, if any, posed to public safety by the petitioner;
- 4 (b) The circumstances regarding the firearms prohibition imposed on
- 5 the petitioner by 18 U.S.C. section 922(g) (4);
- 6 (c) The petitioner's criminal and mental health history and records;
- 7 (d) The petitioner's reputation as developed through character
- 8 witnesses or other character evidence; and
- 9 (e) The public's interest in granting or denying the relief requested.

10 (5) After the hearing on the petition, the court shall consider the
11 evidence presented and issue a written decision. The requested relief
12 shall be granted if the court finds upon proof by clear and convincing
13 evidence that the petitioner is not likely to act in a manner dangerous to
14 public safety and that the granting of such relief is not contrary to the
15 public interest. The court's order shall stipulate that any relief granted
16 shall not be effective until the time for an appeal period has expired.
17 Concurrent with an order granting relief from the prohibition, the court
18 shall order that, after the expiration of the period for appeal, the national
19 instant criminal background check system be informed that relief from the
20 prohibition has been granted and no longer applies.

21 (6) Either the petitioner or the state may appeal the decision of the
22 court under the procedures established by rule 83 of the Idaho rules of civil
23 procedure. The appeal shall be heard de novo on all issues of law and fact.

24 SECTION 2. That Section 67-3003, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 67-3003. DUTIES OF THE DEPARTMENT. (1) The department shall establish
27 a bureau of criminal identification to:

- 28 (a) Serve as the state's central repository of criminal history
- 29 records;
- 30 (b) Conduct criminal background checks as authorized by law or rule and
- 31 provide fingerprint identification services;
- 32 (c) Obtain and electronically file information relating to in-state
- 33 stolen vehicles and in-state wanted persons;
- 34 (d) Establish and maintain an automated fingerprint identification
- 35 system;
- 36 (e) Establish a uniform crime reporting system for the periodic
- 37 collection and reporting of crimes, and compile and publish statistics
- 38 and other information on the nature and extent of crime in the state;
- 39 (f) Maintain, pursuant to department rule, other identification
- 40 information, which may include, but is not limited to, palm prints and
- 41 photographs;
- 42 (g) Cooperate with other criminal justice agencies of the state, state
- 43 and federal courts, the criminal records repositories of other states,
- 44 the federal bureau of investigation criminal justice information
- 45 services, the national law enforcement telecommunications system,
- 46 and other appropriate agencies and systems, in the operation of an
- 47 effective interstate and national system of criminal identification,
- 48 records and statistics; ~~and~~

1 (h) Develop and implement a training program to assist criminal justice
2 agencies with the recordkeeping and reporting requirements of this
3 chapter; and

4 (i) Obtain and electronically transmit to the national instant
5 criminal background check system (NICS) in accordance with federal law
6 information relating to eligibility to receive or possess a firearm
7 pursuant to state or federal law. Upon notification to the department
8 that the basis for which any such information previously transmitted to
9 the NICS does not apply or no longer applies, the department shall, as
10 soon as practicable, notify the NICS of such change and shall update,
11 correct, modify or remove such information from the NICS database.

12 (2) In accordance with chapter 52, title 67, Idaho Code, the department
13 may adopt rules necessary to implement the provisions of this chapter. Rules
14 relating to information maintained and reported by the court shall be made
15 after consultation with and approval by the Idaho supreme court.